

Appl. No. 10/069,494  
Amdt. dated August 13, 2003  
Reply to Office Action April 24, 2003

REMARKS/ARGUMENTS

In the Office Action, claims 13-21 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention as stated in the Office Action. The claims have been amended by adoption of the Examiner's suggestions, thereby to overcome the rejections under 35 USC 112.

In response to the Examiner's inquiry concerning the joint inventors, applicants respectfully submit that the invention was made commonly by all of the named inventors.

Claims 13-21 were rejected under 35 USC 103(a) as unpatentable over Schreiner et al (5,713,964) combined with Schuster (5,053,057) and the Merck Index in view of Tanner (3,801,292) and Smith et al (4,083,697) on the grounds set forth in the Office Action.

Reconsideration of these rejections is requested respectfully in view of the amendment and the argument herein.

It is urged that the combination of the cited references does also not lead to subject matter of the present main claim, claim 13.

Schreiner teaches a liquid composition. Schuster teaches only that it has been known in the art to add silicic acid to a denaturated alcohol as a fire lighter for coal and wood. This is not a sufficient motivation for adding silicic acid to the liquid composition of Schreiner. However, if one would do so, the inorganic particles, especially the particles of silicic acid, would not be homogenously distributed in the composition. That the Merck-Index shows silicic acid as precipitated silica, is of no significance in motivating one to combine the references to suggest the present invention.

The fact that Tanner does not teach a fire lighter composition in a jelly or paste like condition does not lead to the combination of present claim 13. Especially, as this combination does not solidify at combustion but is rather melting. This is disclosed in the present application.

In more detail, Tanner is teaching a liquid composition rather than a jelly or paste like composition. Tanner does in fact disclose a composition consisting essentially of polymerizable material in water (see e.g. column 4, lines 9 to 14).

Smith does not disclose silicic acid. Combining the teachings of Smith with others does not provide motivation for homogenously distributing the silicic acid in the claimed composition.

In the rejection based on the combination of the teachings of Schreiner, Schuster, Merck, Tanner and Smith, the examiner relies on Schuster to teach silicic acid with alcohol. This is believed to be misleading. Schuster, in column 1 at lines 5-23, discloses

that the silicic acid has been added to the alcohol to make a paste, but that this product is disadvantageous because the alcohol burns too rapidly and also evaporates. Therefore, there would be no motivation to combine the Schuster teaching with the other teachings. Furthermore, Schreiner deals with paraffin without a teaching of silicic acid (as acknowledged by the examiner), and no evidence is introduced by the examiner as to how an interaction of silicic acid and alcohol to make a paste (as described in Schuster) would give any indication as to how silicic acid interacts with paraffin. Again this shows no motivation to combine the references, nor to indicate what would happen if the references were combined.

Tanner teaches paraffin in the passages cited by the Examiner, but teaches further that the paraffin or other organic fuel or polymerizable resin is blended with stabilizers from a listing of various candidate stabilizers, all of which are organic, while the present claim 13 calls for inorganic particles. Therefore, Tanner teaches away from the theory of the present invention, and would not motivate one to combine the references. In a similar teaching, Smith teaches use of a hydrocarbon fuel blended with particles of solid combustible material (col. 1 at line 41) such as wood or peat, this contradicting the teaching of present claim 13 that calls for inorganic particles. In particular, the silicic acid, an oxide of silicon, cannot burn because the silicon is already combined with oxygen. Therefore, Smith teaches away from the present invention. There can be no motivation to combine Smith with the other references to suggest the present invention, and any attempt to rely on Smith and on Tanner would clearly direct one away from the present invention.


It is urged that the foregoing argument has overcome the grounds of rejection under 35 U.S.C. 103. The amendment to the claims is believed to overcome the rejections under 35 U.S.C. 112. Accordingly, the claims are believed to be allowable.

In the event there are further issues remaining the Examiner is respectfully requested to telephone attorney to reach agreement to expedite issuance of this application.

Applicants respectfully requests that a timely Notice of Allowance be issued in this case.

Since the present claims set forth the present invention patentably and distinctly, and are not taught by the cited art either taken alone or in combination, this amendment is believed to place this case in condition for allowance and the Examiner is respectfully requested to reconsider the matter, enter this amendment, and to allow all of the claims in this case.

Respectfully submitted  
Bernd Laudi, et al


by:   
MARTIN A. FARBER  
Attorney for Applicants  
Registered Representative  
Registration No. 22,345

CERTIFICATE OF MAILING UNDER 37 CFR SECTION 1.8(a)

I hereby certify that the accompanying Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 13, 2003.

Dated: August 13, 2003

866 United Nations Plaza  
Suite 473  
New York, NY 10017  
(212) 758-2878

  
MARTIN A. FARBER